

REMARKS

In a recent telephone conference with the Examiner on December 11, 2009, the Examiner indicated with 99.9 percent certainty that Claims 157 and 158 are allowable, and requested that Applicant proceed with filing this Supplemental Amendment to align the remaining independent claims with those allowable claims. Although the Examiner indicated that he had not received the further results of a supplemental search on the claims, he strongly expected that the language of pending Claims 157 and 158 to be allowable. Accordingly, Applicant is proceeding based on the Examiner's representation that those claims are allowable, and is filing this Supplemental Amendment in hopes that it will help expedite the allowance of the application.

In that regard, in accordance with the Examiner's indication of allowable claim language in Claims 157 and 158, Applicant has amended several of the remaining pending claims to align them with allowable Claims 157 and 158, has added certain claims to mirror the approach of Claims 157 and 158 and has canceled other claims. Among other things, Applicant has added new apparatus Claim 159 that is virtually identical to the previously allowable method Claim 158 but starts with "An apparatus for" rather than "A method for". Applicant respectfully submits that this is an acceptable and straightforward modification, and that it allows a simpler approach to slightly amending the METHOD Claim 158 to overcome any Section 101 issues (so that Claim 158 now more expressly refers to a method involving a physical thing).

In addition, for the convenience of and to reduce the burden on the Examiner and Applicant, Applicant has canceled certain of the many pending claims. Although Applicant believes that most, if not all, of the pending claims could be amended in the manner described herein and likewise achieve allowability, Applicant elects at this time to permit the Examiner and Applicant to focus on some of the major claim concepts within the application. Applicant

expressly reserves the right to refile those canceled claims within this or a related application. In that regard, Applicant has canceled Claims 1-109, 112-122, 129-131, 133, 140-144, 147-151, 153 and 155.

Specifically regarding the amendments to the claims that remain in the case, Applicant has amended independent Claims 110 and 123 to further define “a calculating means” or calculating step in accordance with the Examiner’s comments in the aforementioned conference. In addition, Applicant has amended dependent Claims 111, 126, 127, 132, 134-139, 145-146, 152, 154 and 156 to correspond to the amended independent claims from which they depend. Moreover, Applicant has added dependent Claims 160-173 to depend from allowable Claims 158 and 159. Accordingly, after entry of the present amendment, Claims 110-111, 123-128, 132, 134-139, 145-146, 152, 154 and 156-173 will be pending and are allowable.

Applicant respectfully submits that the new claims presented herein do not add new matter as they are sufficiently supported in Applicant’s original-filed specification. Among other things, Applicant has added *apparatus* Claim 159 to simply mirror the approach of allowable *method* Claim 158 and respectfully submits that Claim 159 is likewise allowable. In addition, Applicant has added dependent Claims 160-173 to depend from allowable Claims 158 and 159 and respectfully submits that this does not constitute the improper submission of new matter because the amendment language is sufficiently disclosed in the application as originally filed (and it also mirrors the previously pending dependent claims of the application). Among other things in that regard, Applicant sets forth below a chart detailing some of the locations in Applicant’s original-filed specification where support can be found for each new dependent claim.

New dependent claim no(s).	Dependent claim language	Support in Original-filed Specification
160	means for preparing communications regarding results of said patient encounter and said calculating means, said communications including documentation regarding what was found or what occurred during said evaluation, documentation sufficient to support said billing code, and/or communications to other health care providers	Pg. 9, l. 7-11; Pg. 16, l. 14 to Pg. 17, l. 8
161	means for facilitating use of said information in connection with clinical research, quality control, patient care data base information, clinical notes, clinical counseling notes, or correspondence	Pg. 10, l. 20 to Pg. 11, l. 2
162	a timer for tracking total time of patient encounter and total counseling time during said patient encounter, and an algorithm for comparing said total time of said patient encounter and said total counseling time during said patient encounter, and determining whether said billing code should be based upon said comparison	Pg. 17, l. 9-12; Pg. 27, l. 21 to Pg. 28, l. 3
163	said billing code is derived based on rules set forth in the Documentation Guidelines for Evaluation and Management Services billing code of the Health Care Financing Administration (HCFA), now called Centers for Medicare & Medicaid Services (CMS)	Pg. 4, l. 6-9
164	said electronic means comprises a personal computer, desktop computer, laptop computer, network server, handheld computing device, portable computing device, or scannable form	Pg. 9, l. 12-14; Pg. 15, l. 18-20; Pg. 18, l. 12 to Pg. 19, l. 2
165	said data storage means comprises a data base or data tables	Pg. 11, l. 14-17; Pg. 31, l. 7-16
166	said data base or data tables are modifiable as needed	Pg. 31, l. 11-16
167	an adding means, wherein said user can add free text to said data elements, said free text entered by said user by means comprising voice dictation, voice recognition software, handwriting, or direct keyed entry	Pg. 12, l. 4-19
168	said prompting means is customizable to accommodate needs of specific medical practices	Pg. 13, l. 1-3; Pg. 17, l. 4-8; Pg. 26, l. 1-6; Pg. 28, l. 4-9; Pg. 33, l. 8-10
169	said prompting means is modifiable to accommodate changes in said payer mandates and clinical practice	Pg. 13, l. 1-3; Pg. 17, l. 4-8; Pg. 26, l. 1-6; Pg. 28, l. 4-9; Pg. 33, l. 8-10
170	said prompting means is customizable to accommodate the needs of medical encounters, medical practices, or users	Pg. 13, l. 1-3; Pg. 17, l. 4-8; Pg. 26, l. 1-6; Pg. 28, l. 4-9; Pg. 33, l. 8-10
171	said data access means is customizable according to needs of said medical encounter or of said user	Pg. 13, l. 1-3; Pg. 17, l. 4-8; Pg. 26, l. 1-6; Pg. 28, l. 4-9; Pg. 33, l. 8-10
172	storing patient counseling information and patient care information	at least Claims 139 & 154
173	using said stored patient encounter data for clinical care, prescriptions, counseling materials, educational materials, correspondence, quality assurance, billing, research, historical tracking and/or analyzing	at least Claim 154

Furthermore, Applicant respectfully submits that the proposed amendments to the remaining independent claims (specifically Claims 110 and 123) are commensurate in scope with allowable Claims 157 and 158, and thus an amendment in this regard does NOT require a new search. Among other things, throughout the prolonged prosecution of this application (more than 10 years), it appears that various non-essential limitations were amended into these independent claims, in unsuccessful efforts to persuade various examiners to allow those claims. Having now negotiated agreement with the Examiner regarding allowable claim language, Applicant respectfully submits using those "agreed" limitations should be sufficient to achieve allowance in those other independent claims. In other words, Applicant respectfully submits that none of those non-essential limitations are required in order for the claims to be allowable. In addition, it appears that those limitations potentially unduly limit Applicant's scope of coverage available for the present invention.

Accordingly, Applicant has attempted to amend the claims to more clearly define Applicant's invention by removing various unduly limiting and unnecessary elements from the claims, and respectfully submits that the claims are allowable as amended herein. In the alternative, in the event the Examiner is not agreeable to this approach, Applicant is prepared to consider canceling any remaining rejected or objected to claims in order to move the application to allowance, and respectfully requests that the Examiner contact Applicant's attorney to discuss same prior to or instead of issuing a Final Office Action.

In addition and related to the claim amendments submitted herewith, Applicant thanks the Examiner for indicating in the December 11, 2009 conference that the original-filed specification DOES contain sufficient support for the currently pending claims, including the negotiated

language “to **derive** the Evaluation and Management billing code” and “to **derive** for the user said billing code” (in the “calculating means” clauses).

Accordingly, Applicant respectfully submits that all of the pending claims are now in condition for allowance, notice whereof is respectfully requested of the Examiner.